

United States Bankruptcy Court
Eastern District of Michigan
Southern Division

In re:

Donnell A. Foster, Sr.,
Debtor.

Case No. 05-61038-R
Chapter 7

Earnestine Crutcher,
Plaintiff,

v.

Adv. No. 05-5772

Donnell A. Foster, Sr. and House of God,
Defendants.

Opinion Regarding Motion for Summary Judgment

The defendant, House of God, filed a motion for summary judgment seeking dismissal due to lack of subject matter jurisdiction. The plaintiff, Earnestine Crutcher, filed an objection. The parties have waived oral argument.

I.

On October 11, 2005, Crutcher filed this complaint against Donnell A. Foster, Sr. and House of God, of which Foster was the pastor. Crutcher alleges that, at the direction of Foster, she deposited \$54,392.69 into a House of God account with the understanding that the funds would be used to make the monthly payments on her house and to make repairs to her house so that she could sell it. As part of the transaction, the parties entered into a land contract with Foster as the seller and Crutcher as the buyer. The funds were not used to make repairs or payments on the home.

Crutcher filed a complaint against Foster in Wayne County Circuit Court. However, the

action was stayed by Foster's bankruptcy filing.

Crutcher's complaint includes counts for breach of contract, conversion, fraud and misrepresentation, exception to discharge under § 523(a)(2)(A) and (a)(4), and attorney fees.

Crutcher sought to amend the complaint to add the Foster's non-debtor wife as a defendant. Following a hearing on July 17, 2006, the Court denied the motion because it lacked subject matter jurisdiction.

II.

House of God contends that the Court does not have jurisdiction over it because it is a non-debtor and the resolution of the matter against House of God will have no effect on the estate and will not affect the amount available to creditors.

Crutcher acknowledges that the same reasoning by which the Court concluded that it did not have jurisdiction over the debtor's wife would apply here. However, Crutcher objected to the motion to preserve her rights.

III.

28 U.S.C. § 1334(b) provides, in relevant part:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. § 1334(b).

The Supreme Court, in *Celotex Corp. v. Edwards*, 514 U.S. 300, 307-09, 115 S. Ct. 1493, 1499 (1995), has noted that the "related to"

jurisdiction of a bankruptcy court is “comprehensive” but not “limitless.” It does extend to suits between non-debtor parties, but only if the action has “an effect on the bankruptcy estate.” *Id.* at 308 n. 5, 115 S. Ct. at 1499 n.5. There must be some nexus between the action and the debtor’s bankruptcy case. *Dow Corning Corp.*, 86 F.3d at 489. The existence of common questions of fact alone is insufficient to give rise to “related to” jurisdiction. *Id.*

Beneficial Nat’l Bank v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.), 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998).

In *Lindsey v. O’Brien, Tanski, Tanzer & Young Health Care Providers Of Conn. (In re Dow Corning Corp.)*, 86 F.3d 482 (6th Cir. 1996), the Sixth Circuit held that due to the large number of claims with near certainty of contribution or indemnification claims, the bankruptcy court had “related to” jurisdiction over disputes between non-debtor parties. However, the Circuit specifically noted, “A single possible claim for indemnification or contribution simply does not represent the same kind of threat to a debtor’s reorganization plan as that posed by the thousands of potential indemnification claims at issue here.” *Id.* at 494.

The Court concludes that it does not have subject matter jurisdiction over the claim against House of God. Any claimed connection to the administration of the bankruptcy estate is too speculative and tenuous to permit an assertion of jurisdiction by the Court.

Accordingly, House of God’s motion for summary judgment is granted and the claims against it are dismissed.

NOT FOR PUBLICATION

Entered: August 25, 2006

/s/ Steven Rhodes

Steven Rhodes

Chief Bankruptcy Judge